

## REMARKS/ARGUMENTS

In the Office action dated April 16, 2007, the Examiner essentially repeated the previous rejection with the addition of Applicant's claims submitted therein, *to wit*: the Examiner rejected claims 1 and 7 under 35 U.S.C. § 103(a) as being unpatentable over U. S. Patent No. 3,268,033 in view of U. S. Patent No. 5,644,111 to Cerny *et al.* Claims 2, 5, 8 and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over '033 in view of U. S. Patent No. 2,639,051 to Thomas and further in view of '111.

In the Specification, no changes.

In the Claims, claims 1 is amended.

Applicant's transporter includes a cage-like structure, the inside of which is designed *not* to hold any load, *per se, i.e.*, within the cage, but rather to hold one or more worker(s) who is/are enabled to reach upwardly through the open top of this cage-like structure into an overhead region formed as a load-support deck structure, on which *all transported loads* are thus handled by the transporter -- *handled, that is in the region above the cage-like structure*. Thus, applicant's cage structure, on its inside, is a dedicated worker-carrying structure, as distinguished from being a work-load-carrying structure. The transporter of the invention possesses opposite-side (a) fork-receiving, and (b) load-lateral-delivery, sides, and the overhead load-support deck structure is equipped, adjacent the fork-receiving side of the transporter, with load-stop risers which positively prevent any lateral off-loading of a carried load in a direction aimed toward the fork-receiving side of the transporter.

## **The Applied Art**

U. S. Patent No. 3,268,033 describes a safety cage to be carried on a fork-lift device for carrying workers and materials on the *inside* of the cage. A pallet 30 is constructed and arranged to fit in an open bottom of the cage. A gate 44 is operable to protect the occupant and goods when the cage is in an elevated condition. A worker enters/exits through a safe gate 41, and is able to stand on a fixed floor structure 31, which extends over a small portion of the bottom of the cage. The cage is covered by what appears to be an expanded metal roof 34/35, wherein a portion of the roof (34) slopes downwardly from a flat portion of the roof (35).

U. S. Patent No. 5,644,111 describes an elevator having a hatch in the roof thereof.

U. S. Patent No. 2,639,051 describes an unloader for use with a forklift, wherein a laterally extensible portion of the mechanism extends along the plane of the forks and is oriented 90° thereto.

## **The Claims**

Applicant has reviewed the Examiner's Action and comments, has also thoroughly reviewed the disclosure content of, and claims presented in, the present patent application, and by the present Amendment changes the language of claim 1 to place all claims remaining in this case, on the basis of entry of this Amendment, in conditions for full formal allowance. No change proposed by this Amendment introduces any new matter.

Applicant continues to be dumbfounded by the Examiner's characterizations of the applied art. The Examiner continues to mis-characterize elements of '033 and '051. The

Examiner identifies element 30 of '033 as a load transporter, when such is a pallet which is separable from the remainder of the structure. If equivalent to any part of Applicant's invention, 30 is equivalent to the load support, in function, of Applicant's invention; 44 is identified as a cage-like worker occupancy volume, when it is clearly identified in the Specification as a vertically sliding gate; 31 is a operator platform which covers only a small portion of the horizontal expanse of the safety cage. An expanded metal roof 34/35 covers the safety cage, wherein a portion of the roof (34) slopes downwardly from a flat portion of the roof (35). There is no teaching nor suggestion that 34/35 is used to support anything, other than the Examiner's bald assertion made in light of Applicant's teaching. The Examiner clearly ignores the plain language, and hence the teachings, of the applied art.

Turning to the 35 U.S.C. § 103(a) rejection of claim 1, the Examiner's mischaracterizations notwithstanding, '033 does provide for a worker occupancy volume, but only above operator platform 31, thus the volume fully does not extend over the horizontal floor structure, but is limited to a small portion of the safety cage. Extending the worker occupancy volume to the full horizontal extend of the cage of '033 would defeat the intended use of that device, as there would be no way to capture the pallet though the open bottom of the cage, as required by the plain, very simple, language of '033. If the Examiner insists that 30 is a load transporter, then the load transporter does not meet the requirements of the claim, as there is nothing in '033 attached to 30, except the forks. The actual safety cage of '033 appears to be permanently attached to the lift truck mechanism, thus only the pallet may selectively be removed and captured. This difference alone is sufficient to render claim 1 allowable over the applied art.

Continuing, claim 1 requires a load-support deck structure, which is directly overhead the floor and wall structures, and above the worker occupancy volume. The Examiner substitutes what appear to be an expanded metal roof of '033 for this recited structure. There are several problems with the Examiner's contentions: first, the roof 34/35 of '033 is not intended to carry loads; there is no way for an operator to get to a load carried on 34/35. The inclusion of the hatch of '111 does not help, as the claim requires that the load-support deck structure be upwardly facing, *open*, horizontal, *etc.* 34/35 of '033 is not open; the ceiling of '111 is not open, and includes only a small hatch. The combination of '033 and '111 does not result in a "...generally upwardly facing, open, horizontal, elongate, load-support deck structure...." As previously noted, if there is anything in '033 which is equivalent to the load-support deck, it is pallet 30, however, that structure is *below* the worker occupancy volume. Claim 1 is allowable for this reason alone.

Claim 1 requires that an end of the deck structure adjacent the opposite end (non-load-delivery end) is defined by an upwardly extending load-stop riser structure. The Examiner has not identified any structure in '033 which allegedly teaches this structure. This is understandable, because there is nothing in '033, or any of the other cited and/or applied art, which is even remotely equivalent to the load-stop riser. If fact, a cursory review of the figures of '033 clearly shows that, if 35 is a deck structure, 34 slopes downwardly therefrom, thus promoting dislodgement of any item carried on 35, such that the carried item will fall off the rear side of the safety cage of '033.

Claim 1 also requires a "...deck structure having an open framework which is open

to the underlying worker occupancy volume so as to accommodate load-handling personnel access, and to promote attended personnel assistance, by a worker stationed in said occupancy volume.” Assuming that one may use the Examiner’s claim construction, neither ‘033 nor ‘111 has anything equivalent to the deck structure, and even if 34/35 of ‘033 is such a deck structure, it is not “open to the underlying worker occupancy volume.” 34/35, as previously noted, may be formed of expanded metal decking, but does not meet the required limitations of the claim, which are “...open framework....” ‘111 has a solid closed ceiling with a hatch. This is not equivalent to “...an open framework which is open to the underlying worker occupancy volume so as to accommodate load-handling personnel access, and to promote attended personnel assistance, by a worker stationed in said occupancy volume.” Any combination of ‘033 and ‘111 results in a hatch in 34/35, which does not meet the limitation of the claim. One of ordinary skill in the art would easily recognize that the construction of the safety cage of ‘033 is not intended to carry a load on 34/35, nor would the placement of a load on 34/35 constitute a safe manner of using the invention of ‘033. The Examiner’s contention regarding this feature of ‘033 is simply not a reasonable interpretation or application of the art.

Finally, Applicant has amended claim 1 in the hopes of facilitating allowance of claims with the inclusion of a further limitation of the support deck structure. The now claimed structure is nowhere shown in the applied or cited art. Claim 1 is allowable over the applied art because this last recited element of claim 1 is not present in the combined art. Clearly, claim 1, is allowable over the applied art, as there are at least four distinct elements of claim 1 not found in the combination of the applied art.

Claim 2 is allowable over the applied art because the deployable lateral extension is, when extended outwardly, a substantially *co-planar extension* of the load-support deck structure. Giving the Examiner the benefit of the doubt for a moment, and assuming the 34/35 of '033 is a deck structure, and that the pallet stack unloader of '051 could somehow be combined therewith, the deployable lateral extension is then oriented at a near right angle to the load-support deck, and is clearly not a co-planar lateral extension thereof. While "substantially" allows some latitude in the precise orientation of the lateral extension, it does not provide for a 90° difference. Claim 2 is allowable over the applied art.

Claim 5 requires that beam-like elements extending along the length of the transporter. The Examiner applied elements 35 of '033 as a load-support deck structure, and applied 36 of '033 as the beam-like element. As best determined from Fig. 5 of '033, 36 is a vertically extending element, which cannot possibly extend horizontally between the ends of the transporter. Claim 3 is allowable over the applied art.

Claim 7 includes a limitation that horizontal floor structure extends over the entire horizontal expanse of the cage-like structure. The Examiner seems to believe that '033 teaches such a limitation, even though Applicant has repeatedly shown that the "floor" structure of '033, as defined by the Examiner, includes a removable pallet 30, which the Examiner continues to intentionally misinterpret as a floor, which is separated from the operator's cage by a gate. Claim 7 is clearly allowable over the applied art.

Claims 8 and 9 are allowable for the reasons set forth in connection with claims 2 and 5.

Applicant acknowledges that the Examiner is entitled to give a broad interpretation to Applicant's claims during examination, and that the Examiner may reasonably interpret the prior art. The Examiner is not entitled to interpret the applied art in a manner contrary to the plain meaning of the words and illustrations in that art, nor may the Examiner make an unreasonable interpretation of the applied art in a manner which would not be done by one of ordinary skill in the art. The Examiner, in this case, has unreasonably interpreted the applied art, thereby making a fictionalized device which the Examiner states renders Applicant's invention obvious. Such an interpretation will not be permitted.

In light of the foregoing amendment and remarks, the Examiner is respectfully requested to reconsider the rejections and objections state in the Office action, and pass the application to allowance. If the Examiner has any questions regarding the amendment or remarks, the Examiner is invited to contact the undersigned.

**Request for Extension of time in Which to Respond**

Applicants hereby request a one-month extension of time under 37 C.F.R. § 1.136(a). A PTO Form 2038 Credit Card authorization in the amount of \$60.00 is enclosed to pay the requisite extension fee. The Commissioner is hereby authorized to charge any additional fees



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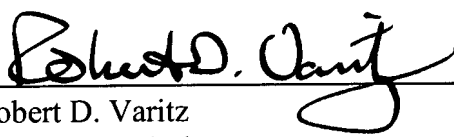
Respectfully Submitted,

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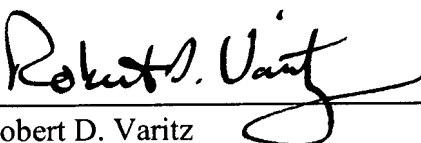
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I hereby certify that the attached Response to Office Action under 37 C.F.R. § 1.111, REQUEST FOR EXTENSION OF TIME UNDER 37 C.F.R. § 1.136(a), and a PTO Form 2038 Credit Card authorization in the amount of \$60.00 is enclosed to pay the requisite extension fee. is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to:

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P.O. Box 1450  
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Robert D. Varitz